IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 853 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVLE VIJAYKUMAR NARANBHAI

Versus

PRINCIPAL, MG SCIENCE AND COLLEGE

Appearance:

1. Special Civil Application No. 853 of 2001

MR DR DAVE for MR MAHENDRA K PATEL for Petitioner

MS KJ BRAHMBHATT for Respondent No. 1-2

MS.ARCHNA RAVAL, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE R.S.GARG

Date of decision: 15/04/2005

ORAL JUDGEMENT

#. Heard learned counsel for the petitioner, Ms. K.J. Brahmbhatt, learned counsel for respondents nos. 1 and 2

and Ms. Archna Raval, learned counsel for respondent no.3.

#. Petitioner being aggrieved by the order dated 27.12.2000 passed by the learned Member, Gujarat Affiliated Colleges Services Tribunal, Ahmedabad on Application No. 83 of 1998, whereunder petitioner's challenge to his termination was rejected, is before this Court.

#. Learned counsel for the petitioner submits that the petitioner did not submit his candidature, but in fact, his name was sponsored by the Employment Exchange and under such circumstances, no fault on his part could be found. His further submission is that not only the name of the petitioner, but number of other names were referred in response to the advertisement, wherein a post was to be filled by a Scheduled Tribe candidate. His submission is that though the petitioner belongs to Scheduled Caste but in absence of any fraud on his part, the Tribunal should have interfered in the matter and in any case, this Court must interfere in the matter, quash the termination order, specially in view of the facts that no inquiry before the termination has been made.

#. Undisputedly, the post on which the appointment was to be made, was reserved for a candidate belonging to the Scheduled Tribe. The case of the respondents is that the petitioner played fraud by submitting his candidature despite knowing the fact that he does not belong to Scheduled Tribe and was not entitled to be appointed. Be that as it may, even if I do not enter into the controversy that the petitioner played fraud or his name was sponsored by the Employment Exchange, even then, on the facts I will not be in a position to give any relief to the petitioner.

#. It is trite law that under the policy of reservation, when a seat is reserved for a particular class then unless there is specific direction by the authority, that the said reserved post may be filled by any other category the said reserved post cannot be filled in by any candidate not belonging to the category for which the post had been reserved.

#. True it is, that no inquiry was made before issuance of the order of termination, but that again in my considered opinion would not make any difference in this matter, because, the facts which are admitted, are sufficient for passing an order against interest of the present petitioner. In any case, principles of natural

justice are not a rule of thumb or law of hammer. A person seeking shelter under the said rule must show to the Court that in absence of a notice to show cause or inquiry he suffered particular prejudice.

#. Taking into consideration totality of the circumstances and the reasons given by the Tribunal in rejecting the claim of the petitioner, I do not think that petitioner is entitled to any relief from this Court. Petition is dismissed. Rule is discharged.

[R.S. GARG, J.]

pirzada/-